

courts established under the Ordinance or to any Judge, Magistrate or officer thereof. The only way in which a District Judge can transfer the case to a Court of higher jurisdiction than his own is by way of Preliminary Enquiry. Under Section 177, therefore, he can either transfer by sending the case to a Magistrate or himself proceed under Chapter XVII of the Criminal Procedure Code.

Appeal Allowed.

FOH KWEE YENG (f) v. THE CAMESON HOTEL.

[Original Civil Juris. (Evans, J.) January 25, 1947]

Rent and Charged Land (Restriction) Enactment, 1940, Section 13—Power of Rent Assessment Board to rehear a case at any time—Procedure of Board—Civil Procedure Code, Section 579—Whether the Court has jurisdiction to issue an order of ejectment in the case of a monthly tenancy created during the Japanese occupation in view of Section 3 of the Courts (Restriction of Civil Jurisdiction) Ordinance 1946—Point not pleaded.

The plaintiff in this case asked for ejectment of the defendant from the premises known as 214, Brewster Road. It appeared that the defendant went into possession of the premises during the Japanese occupation of Malaya on a monthly tenancy. The rent was reassessed in Straits dollars after the re-occupation of the country and thereafter it continued as a monthly tenancy. On the 18th of February 1946 the Rent Restriction Board made an order refusing the application of the plaintiff for leave to eject the tenant. Three months later a new application was made before the Rent Board differently constituted and on the 2nd of May 1946 the Board gave leave to eject the tenant. After the Board had granted leave, the landlord gave a notice to quit dated the 15th May 1946 to expire on 30th June 1946 and that notice has not been challenged. In his plaint the plaintiff alleged the tenancy, the order of the 2nd May 1946, the notice of the 15th May 1946 and the defendant's failure to comply. The defendant did not dispute any of these matters as facts but set up the order of 18th February 1946 and pleaded that the Order of the 2nd of May 1946 was *ultra vires* and bad.

Held, (1) that as Section 13 of the Rent and Charged Land (Restriction) Enactment provides that the Board shall have "full powers of rehearing, reconsideration and revision in any case at any time" the Board had power to make the second order in this case and the later order must be read as superseding the former.

(2) that the point of law, raised by the defendant that the second order of the Board was bad fails and that Judgment must accordingly be given for the plaintiff for an order of ejectment.

Quaere Whether the Court has jurisdiction to issue an order of ejectment in the case of monthly tenancies created during the Japanese occupation in view of Section 3 of the Courts (Restriction of Civil Jurisdiction) Ordinance 1946. This point was not pleaded and it was held that it was unnecessary to decide the point in this case.

Cases referred to:—

- (1) *Chajju Ram v. Neki and others* (1922) A.I.R. P.C. 112.
- (2) *Yeo Peck Chie v. K. S. Gill & Co.* (1946) 12 M.L.J. 131.

ACTION FOR EJECTMENT.

H. T. Ong for the plaintiff.

M. S. Mahendran for the defendant.

Evans, J.:—In this case the plaintiff asks for ejectment of the defendant from premises known as 214, Brewster Road, Ipoh. The plaintiff applied to the local Rent Restriction Board a year ago and on 18.2.46 the Board heard the parties and made an order refusing the application because the plaintiff landlord had other accommodation and the defendant had none, and because there was some doubt as to a point of law arising out of a letter of 17.10.44 and the continued acceptance of rent. Some three months later a new application was made before the Rent Board differently constituted, and on 2.5.46 that Board gave leave to eject the tenant.

The defendant went into possession of the premises during the Japanese occupation of Malaya on a monthly tenancy and, as was admitted before me, the rent was reassessed in Straits dollars after the re-occupation of the country. Thereafter it continued as a monthly tenancy and the landlord at the time of the May application had not given notice to terminate it. After the Board had granted leave he gave a notice dated 15.5.46 to expire on 30.6.46 and that notice has not been challenged.

In his plaint the plaintiff alleged the tenancy, the order of 2.5.46, the notice of 15.5.46, and the defendant's failure to comply. The defendant did not dispute any of these matters as facts, but set up the order of 18.2.46 and pleaded that the order of 2.5.46 was *ultra vires* and bad. The plaintiff applied to have the defence struck out as disclosing no reasonable answer and as being frivolous and vexatious. A point of law having been raised in the pleadings, the order asked for was refused and the case set down for hearing of the argument on the point raised.

The defendant contends that the two orders of the Board are inconsistent and cannot stand together. The second order does not revoke or cancel the first. It was not made and does not purport to be made in

substitution of the first, or on any fresh evidence, or any discovered mistake or error. He argues that the proceedings before the Board are judicial proceedings as provided in Section 11 (IX) of the Enactment, and must be regulated by judicial practice and recognised procedure. In particular such procedure should be followed in any rehearing, reconsideration or revision under Section 13. The proper procedure is to be found in the provisions of Section 579 of the Civil Procedure Code, which in the absence of specific legislation must be taken to regulate the Board's procedure. That Section was considered and construed in *Chhajju Ram v. Neki and others*⁽¹⁾, which lays down that the existence of fresh evidence, or the discovery of some error or some other sufficient reason which means some reason analogous to the discovery of new evidence or of mistake, must exist to justify any review. This Section deals with review and the defendant treats the expressions rehearing reconsideration and revision as referring to the same matter. He went on to point out that the Kuala Lumpur Board had made rules under Section 11 (X) of the Enactment which provide that the practice and procedure of the Court of a Magistrate in a civil suit shall apply to applications to the Board. The Ipoh Board had made no rules but some judicial procedure must apply to their proceedings.

The plaintiff denied that the second order was made on the same facts but on my view of the matter this dispute is immaterial.

Much of what Mr. Mahendran contends for may be highly desirable, just and conducive to the quiet enjoyment of property. But it is not left to the Courts to do what seems just or in the best interests of the community in this matter. It is one dealt with by legislation and I am bound by the exact wording of the enactment. Legislatures at the present day are constantly giving jurisdiction to departmental or amateur tribunals and the ground seems to be that they are free from the practice and procedure Mr. Mahendran advocates. It may also be true that such tribunals when they come to the practical exercise of their powers find themselves obliged to bind themselves by such rules. The Kuala Lumpur Board may have made such rules binding upon it so far as they are not inconsistent with the Enactment. The Ipoh Board is not bound to make rules. There seems no reason why it should not work out its procedure empirically, and I could only question its order in so far as it might be outside its jurisdiction as contrary or extraneous to the Enactment. Section 13 provides that the Board shall have "full

powers of rehearing, reconsideration and revision in any case at any time". These expressions are not necessarily equivalent to review. The Section of the Civil Procedure Code deals with review of the decree, but rehearing may refer to the retrial of a dispute or to the rehearing of evidence which in the stricter construction would imply the same evidence; similarly reconsideration strictly means the considering again of the same facts and arguments. This rehearing may moreover be "at any time", and it seems to me to be impossible to construe this as meaning only at such times as fresh evidence may come to light or similar circumstances may appear. I can only apply it as meaning what it says, "at any time" and not at some special time when other conditions concur.

It appears to me therefore that the defendant's objection in law fails. The Board had power to make the second order. The objection that the earlier order is not mentioned nor revoked is requiring a formality which the law does not command and which seems incompatible with the policy of the Enactment. The later order must be read as superseding the former as there is every reason for supposing the parties knew it was intended to do. The order on which the plaintiff relies is good.

The defendant went on to raise a point not referred to in his pleadings. The plaintiff objected but as the point is one which goes to the jurisdiction of the Court, and as the authorities referred to were recent, I thought it a subject the defendant might properly draw attention to. The tenancy in question here began during the Japanese occupation. It is a monthly tenancy which is one of indefinite duration and its inception was a dealing in land within the Courts (Restriction of Civil Jurisdiction) Ordinance 1946. The definition of dealing in that Ordinance is very wide and undoubtedly includes the creation of a leasehold interest, or monthly tenancy.

Mr. Mahendran cited the case of *Yeo Pek Chie v. K. S. Gill & Co.*⁽²⁾. In that case premises were let in June 1942 by written agreement for one year and the lease was renewed by written endorsement from year to year. The original lease contained specific provisions as to notice, which are set out in the report. The court held that in order to ascertain the validity of the notice to quit it must turn to these provisions of the original lease. The original lease was made in June 1942, and is undoubtedly a dealing in land within the Courts (Restriction of Civil Jurisdiction) Ordinance 1946.

The determination of that case depended on the consideration of that dealing and the action was accordingly held to be one removed from the jurisdiction of the Court by the terms of Section 3 of this Ordinance. It will be noted that the actions so removed are actions generally concerning any dealing in land which took place during the Japanese occupation, and not actions for the enforcement of such dealings or to recover debts or damages arising thereout nor even actions solely concerning such dealings. I respectfully agree with the views of the law laid down in that case, and would make this the clearer by reason of my later remarks.

In the case before me the premises are let on a monthly tenancy. Such a tenancy may be created by written or verbal agreement or might be deduced from the acts of the parties. The incidents of such a tenancy are inferred by law where they are not prescribed by express agreement. Such incidents include the requirements of a valid notice to quit and such requirements might be ascertained without reference to the agreement between the parties. But in order to ascertain whether the tenancy is a monthly tenancy and what are the relations between the parties it would be necessary to consider any express agreement made, and where the relationship is to be inferred from the acts of the parties, the most important acts of the parties to be considered would be those accompanying the tenant's entry into possession. It is therefore argued that here, and, presumably, over most or all monthly tenancies created during the Japanese occupation, this court has no jurisdiction to issue an order of ejectment. I was asked to give a written judgment, possibly because it was thought this question must be decided. There can be no doubt that it is a highly important point, and that this extension of the decision in *Yeo Peck Chie v. K. S. Gill & Co.* would affect many persons, and probably cause grave inconvenience by greatly increasing the number of persons and the amount of property involved in indefinite uncertainty as to their rights. Again it is not a point which can be decided on pure legal principles or in the light of the consequences resulting but must depend on the words of the Ordinance. It is a point which certainly calls for decision, but it is not necessary to the decision of this case.

It is true that the tenancy in this case commenced during the Japanese occupation, and that, in determining the nature of that tenancy, it might be necessary to consider a dealing in land during that period, but I am not required to determine any such

matter. The plaintiff has alleged a monthly tenancy in section 3 of the plaint and this with the other facts necessary to the plaintiff's case are admitted by the defendant's pleadings. In determining the nature of the tenancy I have not to go beyond the pleadings.

The point referred to above does not therefore require to be determined and anything I might say would be pure obiter. It is unfortunate that in other cases tenants may be led to deny in their pleading the plain facts in order to take advantage of the point raised by the defence here, but such is the position. In effect then the facts essential to the plaintiff's case are admitted or not specifically denied and are before the Court. The point of law raised by the defendant fails and judgment must accordingly be given for the plaintiff for an order of ejectment of the defendant from No. 214, Brewster Road, Ipoh by 15.2.47 and for payment by the defendant to the plaintiff of mesne profits at the rate of \$70/- p.m. from the termination of the tenancy to the date of ejectment and Costs.

Order Accordingly.

LEE LIP NGEE v. CROWN COUNSEL.

[App. Crim. Juris. (Evans, J.) October 28, 1946]

Food Control Proclamation No. 10 of 1945, Articles 4 and 14—Foodstuffs Movements (Restriction) Order 1945 as amended by Foodstuffs (Restriction) Amendment Order 1946—Prosecution need only prove the doing of the act prohibited—Mens rea unnecessary to constitute offence.

The appellant was convicted before the District Judge at Telok Anson for moving a controlled article, to wit, 186 bags of white rice, without the written authorization of the Assistant Food Controller, Lower Perak, contrary to Section 2 of the Foodstuffs Movement (Restriction) Amendment Order 1946. The appellant was the owner of the rice seized which at the time of seizure was in a boat off the coast of Perak. On his appeal against conviction it was argued (*inter alia*) that intent was an essential ingredient in moving and that there was no proof of any intent to move or of any *mens rea* on the part of the appellant.

Held, (1) that having regard to the provisions of Article 14 of the Food Control Proclamation, the only matter the respondent had to prove at the trial, was the doing of the act which was prohibited by the order and that the onus was on the appellant to show that he was entitled to do such act;

(2) that on the facts there was ample evidence on which the District Judge might find that the rice was being moved within the State of Perak by the appellant and that as the appellant had failed to discharge the onus put upon him by the Proclamation, the District Judge was right in convicting him.